

opportunity for release. The Supreme Court has created a special constitutional rule for juvenile offenders based on their greater capacity for rehabilitation as compared to adult offenders. Under no logical basis would the Court extend this rule to “life without parole” juveniles, but not grant it to “life” juveniles.

The Supreme Court has recognized that “children are different” because juveniles have “lessened culpability” and a greater capacity for change.” *Miller v. Alabama*, 132 S.Ct. 2455, 2470, 2460 (2012). This reasoning applies just as fully to Mr. Hayden, who was convicted of a crime he committed when he was 15 years of age. He too deserves a “*meaningful*” opportunity to obtain release on parole.

II. Mr. Hayden has not been offered a “meaningful” opportunity for release

North Carolina provides the minimal amount of due process required by the Fourth Circuit: “a statement of reasons for denial of parole.” *Franklin v. Shields*, 569 F.2d 784, 801 (4th Cir. 1996). North Carolina does not provide the offender with notice before his parole consideration. North Carolina does not permit the offender to be heard in writing or in person or via video conference. Finally, in North Carolina, the Parole Commissioners do not hold a hearing to consider an offender’s parole decision.

This cursory degree of due process is acceptable for adult offenders, but it does not rise to the level of a “meaningful opportunity for release.” While it is true that the Supreme Court has not defined “meaningful” in this context, it is fair to say that it is something more than a “minimal right to due process”—the words that Defendants, themselves, use to describe their conception of Mr. Hayden’s entitlement. (D.E. 37 at 12).

As of September 2014, the Parole Commission had reviewed over 15,000 cases during 2014. Due to this super-human volume of work, the Parole Commission's Administrator testified that it causes "problems" if a Commissioner spends too much time reviewing a particular offender's file. D.E. 32-2, Stevens Depo. at 117. Contrary to Defendants' assertions, Mr. Hayden does not complain about the parole review process simply because he has not yet been released. He complains because he has not been given the opportunity to make a showing that he ought to be released. The Commissioners cursorily review a summary of his prison file without giving him the opportunity for input. He fully concedes that even if he is given a full and fair opportunity to try to show his rehabilitation and maturity, he may not ever be granted parole. Parole is a discretionary decision. Mr. Hayden simply seeks full procedural protections so that his opportunity for parole is "meaningful" as opposed to perfunctory.

Respectfully submitted,

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/s/Elizabeth G Simpson
Elizabeth G Simpson
N.C. State Bar No. 41596
Mary S. Pollard
N.C. State Bar No. 20081
Attorneys for Plaintiff
N.C. Prisoner Legal Services, Inc.
1110 Wake Forest Road
Raleigh, North Carolina 27604
Telephone: (919) 856-2200
E-mail: esimpson@ncpls.org

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Jodi Harrison
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
919-716-6573
Fax: 919-716-0001
Email: jharrison@ncdoj.gov

/s/ Elizabeth G. Simpson
Elizabeth G. Simpson
N.C. State Bar No. 41596
Mary S. Pollard
Attorneys for Plaintiff
N.C. Prisoner Legal Services, Inc.
1110 Wake Forest Road
Raleigh, North Carolina 27604
Telephone: (919) 856-2200
E-mail: esimpson@ncpls.org